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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

TOBY CROSS and ARTHUR LOPEZ,
individually, and on behalf of themselves,
and all others similarly situated individuals,

Plaintiffs,

V.

Data Solutions of America Inc., et al.

Defendants.

Case No. 3:13-CV-05013-M-BH
Honorable Magistrate
Judge Irma C. Ramirez

**PLAINTIFF'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED CLASS
ACTION COMPLAINT WITHOUT PREJUDICE PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE 41(a)(2)**

TO THE HONORABLE IRMA C. RAMIREZ, UNITED STATES DISTRICT
MAGISTRATE JUDGE:

Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, Plaintiffs Toby Cross
and Arthur Lopez ("Plaintiffs") file this PLAINTIFF'S MOTION TO DISMISS

PLAINTIFF'S SECOND AMENDED CLASS ACTION COMPLAINT WITHOUT

PREJUDICE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41(a)(2),

based on the following:

1. On December 27, 2013, Plaintiffs filed a Class Action Complaint seeking declaratory, injunctive and other appropriate relief in the above-styled matter, [See Dkt No. 1].
 2. On December 30, 2013, Plaintiffs amended the Complaint and filed Plaintiff's Second Amended Complaint, [See Dkt No. 5].
 3. On August 13, 2015, Defendant CIS was dismissed, [See Dkt No. 141].
 4. On September 30, 2015, the Court issued an order of Dismissal or Administrative Closure, [See Dkt No. 155].
 5. On December 17, 2016, Plaintiffs filed a Motion to Amend, [See Dkt No. 156].
 6. On January 31, 2017, the case was reopened, [See Dkt No. 163].
 7. On July 14, 2017 30, 2015, the Court issued an order of Findings and Recommendations, [See Dkt No. 165].
 8. On August 7, 2017, the Court issued an order of Accepting/Adopting Findings and Recommendations, [See Dkt No. 167].
1. Plaintiffs had filed a Motion to Amend the Complaint to involve only KMB Statistics LLC., a defunct corporation, and to add new Defendants as opposed to filing a new lawsuit against such Defendants due to concerns related to statute of limitations. After further review, and recent Federal Court rulings related to DPPA statute of limitations,

Plaintiffs seek a voluntary dismissal of this action without prejudice. In support of this motion, Plaintiffs state as follows:

1. This Court has subject matter jurisdiction with respect to all claims asserted against KMB Statistics LLC.;
2. KMB Statistics LLC. has not filed an answer or motion for summary judgment;
3. This Court has found KMB Statistics LLC. in default, permitting Plaintiffs to move for default judgment, [See Dkt. No. 167];
4. Plaintiffs have determined moving for default on KMB Statistics LLC. would be futile, due in part because of the filed bankruptcy of its owner;
5. This Court has not permitted additional Defendants to be added to Plaintiff's Complaint,[See Dkt. No. 166];
6. Plaintiffs have determined moving to include additional Defendants at this time would be futile, due in part because of recent Federal Court rulings related to Statute of Limitations related to DPPA;
7. No motion for class certification has yet been filed in this action.

WHEREFORE, Plaintiffs respectfully moves for an Order approving Plaintiff's voluntary dismissal of this action without prejudice, and with no award of fees or costs.

Dated: September 2, 2017

Respectfully submitted,

LAW OFFICES OF JOSEPH H. MALLEY P.C.

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Attorney for Plaintiffs
individually, and on behalf
class of similarly situated individuals

CERTIFICATE OF CONFERENCE

I certify that Plaintiff's Counsel has no telephone number or residential address, other than an email address, to contact Elizabeth Blank, owner of KMB Statistics LLC.. Prior attempts to contact her directly had failed in the past. Elizabeth Blank's Attorney, Chris Rusek, withdrew from the case in January 2017, [See Dkt. No. 160].

By: /s/ Joseph H. Malley
JOSEPH H. MALLEY

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was filed in accordance with the Federal Rules of Civil Procedure via the CM/ECF system upon the filing hereof on this 2th day of September, 2017.

By: /s/ Joseph H. Malley
JOSEPH H. MALLEY